

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RENJE JI,

Petitioner,

v.

A. NEIL CLARK, et al.,

Respondents.

CASE NO. C06-797-JLR-JPD

ORDER FOR EVIDENTIARY HEARING

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Renje Ji is a native and citizen of the People's Republic of China who is currently detained by the United States Immigration and Customs Enforcement ("ICE") on \$20,000 bond. On June 8, 2006, petitioner, proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, alleging that his detention is unreasonable under *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), and under the Eighth Amendment, because he is unable to afford the present bond amount. (Dkt. #6). Petitioner requests that the Court lower his bond to \$3,000. On August 22, 2006, respondents moved to dismiss, arguing that petitioner's detention is lawful and that his bond is a proper condition of release. (Dkt. #10 at 3).

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1 Having carefully reviewed the entire record, I conclude that an evidentiary hearing is
2 necessary to determine the validity of petitioner's claim.

3 II. BACKGROUND AND PROCEDURAL HISTORY

4 Petitioner is a native and citizen of the People's Republic of China.¹ (Dkt. #14 at 2). On
5 October 20, 1995, he last entered the United States at Los Angeles, California, as a B-1
6 nonimmigrant visitor, with authorization to remain in the country until January 27, 1996. (Dkt.
7 #12 at R146, R173; Dkt. #14 at 5). Petitioner subsequently adjusted his status to L-1
8 (nonimmigrant worker) and F-1 (student), but allowed his status to expire. (Dkt. # 14 at 7-8).

9 On October 3, 2005, ICE served petitioner with a Notice to Appear, placing petitioner in
10 removal proceedings and charging petitioner with removability under INA § 237(a)(1)(B), for
11 having remained in the United States for a time longer than permitted, and under INA §
12 237(a)(1)(C)(i), for failing to maintain or comply with the conditions of his nonimmigrant status.
13 (Dkt. #12 at L236). The same day, ICE issued a Warrant for Arrest of Alien and a Notice of
14 Custody Review, indicating that petitioner may be released on bond in the amount of \$40,000.
15 (Dkt. #12 at L227). Petitioner requested a bond redetermination hearing before an Immigration
16 Judge ("IJ"). (Dkt. #12 at L228, L266-68, R71-75).

17 On November 2, 2005, an IJ held an individualized bond hearing. On November 12,
18 2005, the IJ issued a decision lowering petitioner's bond from \$40,000 to \$20,000. (Dkt. #12 at
19 L293). Petitioner appealed the IJ's bond redetermination to the Board of Immigration Appeals
20 ("BIA"). (Dkt. #12 at L298). On January 31, 2006, the BIA affirmed the IJ's bond

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22 ¹Respondents stated in their Return and Motion to Dismiss that "in the interest of
23 judicial economy, Respondents are not filing a copy of Petitioner's A-file with the Court at this
24 time." (Dkt. #10 at 2). Respondents subsequently submitted petitioner's administrative file
25 ("A-file"), but provided no citations to petitioner's A-file. (Dkt. #12).

1 determination and dismissed the bond appeal.

2 In removal proceedings, petitioner conceded his removability under INA § 237(a)(1)(B),
3 but denied his removability under INA § 237(a)(1)(C)(i). DHS later withdrew the charge of
4 removability under INA § 237(a)(1)(C)(i). Petitioner's removal proceedings were continued to
5 allow petitioner time to file an application for asylum.

6 On January 17, 2006, the IJ denied petitioner's applications for asylum, withholding of
7 removal, and for relief under the Convention Against Torture, but granted petitioner voluntary
8 departure by January 24, 2006. (Dkt. #12 at L7). Petitioner timely appealed the IJ's decision to
9 the BIA. On June 23, 2006, the BIA dismissed the appeal, and granted him seven days
10 voluntary departure. (Dkt. #12 at L481-84). On July 10, 2006, petitioner timely filed a Petition
11 for Review in the Ninth Circuit Court of Appeals. The Ninth Circuit subsequently entered a
12 temporary stay of removal *pendente lite*. Petitioner's appeal is currently pending in the Ninth
13 Circuit.

14 On June 8, 2006, petitioner filed the instant Petition for Writ of Habeas Corpus,
15 challenging the lawfulness of his continued detention. (Dkt. #1). The Court declined to serve
16 the petition but granted petitioner leave to amend his petition, finding that petitioner had failed
17 to state precisely the grounds on which he based his allegation that he is being held in custody
18 unlawfully. (Dkt. #5). On July 3, 2006, petitioner filed an amended Petition for Writ of Habeas
19 Corpus. (Dkt. #6). On August 22, 2006, respondents filed their return and motion to dismiss.
20 (Dkt. #10). On October 12, 2006, petitioner filed his response. (Dkt. #13). On November 3,
21 2006, respondents filed a reply. (Dkt. #15). The habeas petition and motion to dismiss are now
22 ripe for review.

23 III. DISCUSSION

24 Petitioner challenges the imposition of the \$20,000 bond, arguing that the amount is

1 unreasonable and excessive, and has resulted in his indefinite detention because he is unable to
2 post the bond amount. (Dkt. #13 at). Petitioner has submitted evidence indicating that given
3 his present financial circumstances, he is unable pay or borrow the exceptionally large bond
4 amount, so therefore he remains in detention indefinitely. (Dkt. #13 at 10-11, Dkt. #14,
5 exhibits). Inexplicably, respondents do not address petitioner's claim in either their motion to
6 dismiss or reply brief, arguing instead that "Petitioner has submitted no evidence or
7 documentation showing that the \$20,000 bond poses a financial hardship to him." (Dkt. #10 at
8 5, Dkt. #15 at 4).

9 As a threshold matter, the Court finds that ICE has the statutory authority to require a
10 detainee to post a reasonable bond as a condition to release under 8 C.F.R. § 241.5.² *See also*
11 *Zadvydas*, 533 U.S. at 700; *Doan v. INS*, 311 F.3d 1160, 1162 (9th Cir. 2002); *Cao v. INS*, 189
12 F. Supp. 2d 1082, 1086 (S.D. Cal. 2001). In addition, the regulation appears to give
13 respondents wide discretion in determining the appropriate bond amount. The Ninth Circuit has
14 noted, however, that "serious questions may arise concerning the reasonableness of the amount
15 of the bond if it has the effect of preventing an alien's release." *Doan*, 311 F.3d at 1162; *see*
16 *also Shokeh v. Thompson*, 369 F.3d 865, 872, *vacated by* 375 F.3d 351 (5th Cir. 2004). Thus,
17 the Court does not find that the regulation permits respondents to impose a bond in an amount
18 which is beyond petitioner's ability to pay, and therefore results in the same indefinite detention
19 that the Supreme Court in *Zadvydas* forbid. By analogy, the Court notes that detention for
20 inability to meet a financial condition of release is prohibited by law in the context of federal

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22 ² 8 C.F.R. § 241.5 states:

23 (b) *Posting of bond*. An officer authorized to issue an order of supervision
24 may require the posting of a bond *in an amount determined by the officer to*
be sufficient to ensure compliance with the conditions of the order, including
surrender for removal.

25 8 C.F.R. § 241.5(b) (emphasis added).

1 criminal charges. *See* 18 U.S.C. § 3142(c).

2 Here, neither petitioner nor respondents have adequately addressed the reasonableness of
3 the \$20,000 bond imposed for petitioner's release, nor have respondents replied to petitioner's
4 assertion of his inability to pay. Accordingly, the Court finds that an evidentiary hearing is
5 required to determine whether the bond imposed is reasonable, and therefore lawful, pursuant to
6 *Zadvydas*.

7 IV. CONCLUSION

8 Accordingly, it is hereby ORDERED:

9 (1) The Court shall conduct an evidentiary hearing to determine whether a \$20,000 bond
10 is reasonable in light of petitioner's financial circumstances.

11 (2) The Clerk shall appoint counsel to represent petitioner pursuant to 18 U.S.C. §
12 3006A(a)(2)(B), and shall advise the undersigned Magistrate Judge's Chambers of the
13 appointment. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*,
14 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases
15 in the United States District Courts ("If an evidentiary hearing is required the judge shall
16 appoint counsel for a petitioner who qualifies for the appointment of counsel under 18 U.S.C. §
17 3006A(g) and the hearing shall be conducted as promptly as possible, having regard for the
18 need of counsel for both parties for adequate time for investigation and preparation.").


19 (3) The Clerk shall schedule a conference between the Court and counsel. At that
20 conference, the Court will set a hearing date, set deadlines for the submission of lists of witnesses
21 and exhibits, and for any motions *in limine* and pre-hearing briefs, and arrange for the presence
22 of petitioner at the evidentiary hearing.

23 (4) Following that hearing, the Magistrate Judge shall submit to the U.S. District Judge
24 Recommended Findings of Fact and Conclusions of Law, and a Recommended Order on the

1 habeas petition.

2 (5) The Clerk is directed to send copies of this Memorandum Order to petitioner, to
3 counsel for both parties, and to the Honorable James L. Robart.

4 DATED this 29th day of November, 2006.

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6 JAMES P. DONOHUE
7 United States Magistrate Judge
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